

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

JAMES CODY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 4:17-CV-2707-AGF
	)	
CITY OF ST. LOUIS,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court on Defendant’s “Motion for Order Under Rule 23(d) to Limit Discovery” (ECF No. 70) in which Defendant seeks to bifurcate discovery into class certification issues and merit-based issues. Plaintiffs oppose the motion.

Defendant claims that bifurcation will promote the early and efficient resolution of class issues contemplated by Federal Rule of Civil Procedure 23. Defendant argues that a class is unlikely to be certified, and therefore, conducting discovery on merits-based issues is premature, burdensome, and inefficient. Plaintiffs oppose Defendant’s motion on the grounds that this case had been pending for more than a year, and the parties had been engaged in discovery for more than eight months, before Defendant filed their motion proposing bifurcation for the first time; bifurcation will likely lead to further delay and discovery disputes; and discovery relating to class certification is closely intertwined with merits discovery.

Upon careful consideration of the parties’ arguments in light of the proportionality and efficiency concerns set forth in Federal Rules of Civil Procedure 23 and 26, the Court

will deny Defendant's motion. The Court agrees with Plaintiffs that bifurcation of discovery would lead to further delay and inefficiency in this case. In particular, bifurcation would undoubtedly lead to discovery disputes over what constitutes class or merits discovery, and Defendant proposes no clear test for distinguishing between the two. Nor could the Court easily create such a test, given the extensive overlap between class certification and merits issues here.

Accordingly,

**IT IS HEREBY ORDERED** that Defendant's Motion for Order Under Rule 23(d) to Limit Discovery is **DENIED**. ECF No. 70.

**IT IS FURTHER ORDERED** that the parties shall submit a joint proposal of amended case management order deadlines for the remaining issues in this litigation within **seven (7) days** of this Order.

  
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AUDREY G. FLEISSIG  
UNITED STATES DISTRICT JUDGE

Dated this 16th day of January, 2019.